THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11760 OF 2005

DISPOSED OF ON 28-11-2005.

BETWEEN:

G.SADANAND AND OTHERS …..PETITIONERS

AND

MUNICIPAL CORPORATION OF HYDERABAD

& OTHERS ….. RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11760 OF 2005

O R D E R :

1. The petitioners who are four in number has filed this writ petition with a prayer to issue a writ of mandamus declaring the proceedings of Chief City Planner, Municipal Corporation of Hyderabad-2nd respondent as arbitrary and illegal apart from being violative of the order dated 19.4.2005 passed in W.P.No.3104 of 2005.

2. The case has a chequered career. The petitioners are the owners and possessors of the premises bearing municipal No.6-3-902/A, Somajiguda, Hyderabad admeasuring 2006.40 square meters. They submitted an application on 16.4.2003 u/ss 428 to 433 of Hyderabad Municipal Corporation Act, seeking permission for construction of basement, stilt + upper 5 floors-a 'U' type commercial complex in the said premises. When the the petitioners were proceeding with the construction of cellar in the said premises, a notice dated 17.10.2002 came to be issued to them. The notice reads as follows:

" During the course of inspection it is observed that you have excavated the cellar in Pr.No.6-3-902/A situated at Somajiguda. You have dug the cellar without leaving the required setbacks. Thereby the walls have developed the cracks and it may fall at any movement causing damage to the property and lives of the neighbors.

This is occurring due to non-compliance of the rules and regulations and negligence by you. If any damage with regard to the life and property of the neighbours occurs, you will be held responsible and the action will be initiated as per rules."

The building permission application of the petitioners came to be refused by the respondents–Corporation under letter No.0396/CSC/TPS/2003/1739, dated 28/29-4-2003. The reasons for refusal of the building permission as stated in the above-referred letter are:

"1) In the cross section plan connecting ramp approaching from main road is not indicated.

2. In the cross section plan "AA" "BB" the details of nala has not indicated.

3. The actual ground level towards main roadside has not indicated in the Section plan of "AA" & "BB".

4. On side parking shown in ground floor towards main road is not feasible.

5. The party has not indicated the road widening affected area in the proposed plan.

6. The use of typical floor plan has not correctly mentioned it is either for show rooms or for offices soon as to calculate the correct No. of car parking spaces.

7. Party has unauthorisedly excavated the cellar.

In view of the above, you are informed to rectify the above defects and submit the received plan by complying with all the above requirement within six months from the date of this intimation other wise the file will be closed and no further correspondence will be entertained with this reference afterwards."

The petitioners re-submitted the plan on 3.5.2003. They were informed that the building committee examined the proposal and requested them to remit the following fees and charges within ten days under a letter dated 23-7-2003:

1) Building permit fee : 1,64,000.00

2) Development charges : 5,99,693.00

3) Betterment charges : 5,99,693.00

4. External betterment

Charges : 1,99,898.00

5) Security deposit : 4,54,313.00

6. Land use conversion

Charges : Nil

7) Impact fee : 17,65,250.00

8) 10% Impact fees : 1,76,525.00

9) Sub division/Layout charges: Nil

10) Compounding fee : 8,425.00

Total : 33,68,104.00

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The petitioners were also directed to submit an undertaking on Rs.20/- non-judicial stamp paper separately the following:

1. Handing over the site affected 183.00 square meters in road widening to MCH in original and two Photostat copies along with 2 clothes and 3 ammonia prints showing the affected portion towards northern side.

2. To furnish an undertaking on Rs.100/- non judicial stamp paper duly notarized for not to keep construction material/debris on roads, parking, balconies, to pay special sanitation fee and garbage collection charges and not to convert into multiple residential units.

3. To furnish the security deposit in cash or bank guarantee or FDR pledged with MCH Rs.100/- per square meter of total built up area calculated under item of serial No.5.

4. To furnish copy of upto date tax receipts in respect of the property. (upto 31.3.2004).

5. 36 no. of trees to be planted in the site area.

6. Rain water harvesting structures to be constructed.

7. To furnish an undertaking in respect of the supervision of the construction and quality of material from the builder/owner, architect, structural engineer, site engineer.

8. To furnish Soil Test Certificate and structural stability certificate.

9. Display board photographs (2 copies) showing the plan, elevation section, site plan and location plan of the proposed complex.

10. Undertaking from builder/developer/architect and structural engineer/ site (project engineer regarding their responsibility, collectively/ individually for construction of the building as per the sanctioned plan without any deviations; to follow structural design submitted to the Corporation to use good quality immediately as per the National Building Code and take measures to take strictly safety.

11. To fulfill the requirement as per G.O.Ms.No.541, M.A., Dated 17.11.2000.

While the petitioners were proceeding with the constructions contrary to the sanctioned plan, a notice dated 26.7.2004 u/s 452 of Hyderabad Municipal Corporation Act, 1955 (for short Act) came to be issued to the petitioners as why the building work or such portion of the work found to be done contrary to the sanctioned plan should not be removed/altered so as to bring it in conformity with the sanctioned plan. The petitioners submitted reply on 29.7.2004. They filed W.P.No.13458 of 2004 questioning the notice dated 26.7.2004, which came to be

disposed of on 30.7.2004 directing the respondents-Corporation to accord personal hearing before passing any order u/s 636 of the Act. The said order reads as under:

" The learned Standing Counsel for the Municipal Corporation of Hyderabad submits that after following the necessary procedure u/s 636 of the Act only the authorities have to proceed further in the matter.

In view of the same, if the petitioners require any personal hearing to explain their case, the respondent authorities shall provide such opportunity to the petitioners before passing any order u/s 636 of the Act and if any such order is passed the same shall not be implemented for a period of two weeks enabling the petitioners to avail the appropriate remedy available to them. Till passing of such order u/s 636 of the Act, the respondent authorities shall not demolish the structure pursuant to the impugned notice."

Pursuant to the order passed in the said writ petition, a notice dated 5.8.2004 came to be issued to the petitioners directing them to appear before the respondents-authorities with all relevant documents on 9.8.2004 at 11 A.M. The petitioners sought for time and their request came to be acceded. While extending the time for hearing, the respondents-authorities informed the petitioners not to proceed with any type of construction failing which action will be taken on the same as per rules. The relevant portion of the notice dated 19/20-8-2004 reads as under:

" In pursuance of the above court orders this office has conducted hearing with you on 9.8.2004. In the hearing Sri Krishna, Sri Shiva Mohan Reddy and others were present. You have requested to postpone the hearing. Your request for extending the time for hearing has been considered and you are requested to submit your explanation along with the material papers within 10 days from the date of issuing of this letter for taking further action.

Further you are informed for not to proceed with any type of construction failing which action will be taken on the same as per rules."

Finally the respondents-authorities passed orders on 25.10.2004 under section 636 of the Act whereby the petitioners were asked to remove/demolish the deviated portions mentioned in the show cause notice dated 6.10.2004. The petitioners filed W.P.No.19824 of 2004 assailing the order-dated 25.10.2004. The relief sought for in the said writ petition is as follows:

" For the reasons stated in the accompanying affidavit that this Honourable Court may be pleased to issue a Writ, order or Direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in issuing the impugned notice U.C.No.0474/UC/CS /MCH/03-04, dt.25-10-2004 as arbitrary, illegal and violative of Article 14 to 21 of the Constitution of India consequently set aside the same as the same is also in gross violation of provisions of the HMC Act, 1955 and in gross violation of the principles of Natural justice and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case."

One of the neighbours to the petitioners premises namely Ms.Jagnandan Mallik filed WPMP.No.1328 of 2004 seeking her impleadment as party respondent in the said writ petition. On the implead petition being allowed, the petitioners requested the court for the withdrawal of the writ petition itself. This Court while dismissing the writ petition (WP.No.19824 of 2004) on the request of the petitioners on 4.3.2005 passed the following order:

" 2. The contention of the learned counsel for the third respondent, who came on record by virtue of orders dated 4.3.2005 in WPMP.No.1328 of 2005, is that when the Municipal Corporation gave a notice asking the writ petitioners to stop the unauthorized construction, they filed this writ petition and obtained an interim order and when the third respondent filed a petition to implead himself as a party to bring to the notice of the court about the facts that have happened, and after the Municipal Corporation filed its counter, petitioner is coolly withdrawing the writ petition after completing construction under the guise of the orders of stay obtained from this Court.

3. In the circumstances stated, the writ petition is dismissed with costs. Advocate fee is fixed at Rs.2500/-. It is made clear that if the construction made by the petitioners are in violation of the provisions of Building Rules or any other provisions of the Hyderabad Municipal corporation Act, the Municipal Corporation is at liberty to proceed against the petitioners."

The revised plan submitted by the petitioners came to be rejected by order dated 28/29.12.2004 and it reads as under:

" With reference to your building application 1st cited, it is to inform that the proposals submitted by you for the proposed construction of Sub-cellar, Cellar, Ground + 5 upper floors in Pr.No.6-3-902/A, Somajiguda, Hyderabad have been examined and the proposals are refused and the plans are unapproved on the following grounds:

1. You have constructed sub-cellar maintaining column line 2.75 mtrs towards southwest corner as against permitted 3.9 mtrs and also extended the sub cellar to the extent of 1.25 mtrs in the said corner by reducing the cellar setback by 1.5 mtrs.

2. You have extended the sub cellar boundary to the extent of 4.60 mtrs towards eastern side as against the permitted open space of 7.53 mtrs and extended beyond the permitted cellar/basement line.

3. You have maintained 1.60 mtrs at northwest corner as against permitted 3.0 mtrs cellar/basement line.

4. You have constructed cellar maintaining column line 2.75 mtrs towards southwest corner as against permitted 3.0 mtrs and also extended the sub cellar to the extent of 1.25 mtrs in the said corner by reducing the cellar setback by 1.5 mtrs.

5. You have maintained 1.60 mtrs at northwest corner as against permitted 3.0 mtrs cellar/ basement line.

6. You have laid the roof for stilt floor extending the roof up to the sub-cellar and cellar line against the sanctioned plan."

The matter did not rest there. The petitioners approached this court by filing W.P.No.3104 of 2005 alleging that the respondents-authorities have not considered revised plans submitted by them and therefore sought for a direction to consider their revised plan. The said writ petition came to be disposed of on 19.4.2005, the relevant portion of which reads as follows:

> *" The objection raised by the learned Standing Counsel for the Corporation that since the revised plans submitted by the petitioners were already rejected, the petitioners are not entitled to seek reconsideration cannot be accepted since clause 3 of G.O.Ms.No.423, dated 31.7.1998 provides for Review of rejection of building applications. It is clear from the said clause that on rejection of a building application, the owner may represent the case within seven days in which event after hearing, the concerned authority shall communicate its decision on the representation. Hence, as rightly contended by the learned Counsel for the petitioners, the 1st*

respondent ought to have reconsidered the issue in pursuance of the representation made by the petitioners on 30.12.2004.

So far as the third respondent is concerned, it is clear that her claim is only with regard to the alleged damage caused to her building on account of the unauthorized constructions made by the petitioners. If that be so, it is always open to her to work out the common law remedy for the damages, if any, she is entitled to, but the same cannot be gone into by this Court. Since evidently the grievance of the writ petitioners in the case on hand is only with regard to the inaction on the part of the respondent Corporation to consider the revised plan submitted them, the dispute is solely between the petitioners and the Corporation regarding alleged deviations and the request of the petitioners for sanction of the revised plan which has to be considered by the respondent Corporation in terms of G.O.Ms.No.483, dated 24.8.1998 and the guidelines under the Govt. memo dated 14.11.2003. The third respondent being a third party to the said dispute is not entitled to intervene.

Accordingly, the orders dated 28/29-12-2004 and 3.3.2005 are set aside and the writ petition is disposed of with a direction to the respondent-Corporation to consider the request of the petitioners for sanction of the revised plans afresh in terms of G.O.ms.No.483, dated 24.8.1998 and G.O.Ms.No.423, dated 31.7.1998 and the guidelines under the Government Memo dated 14.11.2003 and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

It is made clear that before taking such a decision, the petitioners shall be afforded an opportunity of personal hearing duly informing them the date of hearing in advance. Till such a decision is taken and appropriate orders are passed, the petitioners shall not proceed with the construction of any structures as pointed out in the notice dated 26.7.2004. However, it is open to them to carry on the constructions in respect of undisputed areas as per the sanctioned plan dated 22.9.2003 and the respondents shall not interfere with the same."

3. It is pertinent to highlight the observation made by this Court in the above referred order that liberty has been given to the petitioners to carry on the constructions in undisputed areas as per the sanctioned plan dated 23.9.2003. In other words, the petitioners shall not proceed with the constructions in deviation of the original sanction plan dated 23.9.2003 i.e. stilt + 5 upper floors. Personal hearing was given to the petitioners and the order impugned in this writ petition came to be passed on 26.5.2005 whereby the petitioners were informed that appropriate relaxations were already considered in view of the petitioners handing over a part of the land in road widening and there is no provision under G.O.Ms.No.483, dated 24.8.98 to relax the

rules once again. Thereby the rejection of the revised plan came to be approved. The relevant portion of the impugned order in the present writ petition reads as follows:

> *" In light of the powers delegated under G.O.Ms.No.483 MA, dt.24.8.1998 permission has been accorded to the applicant staking into consideration the building line and public safety. Applicant preferred to undertake the construction beyond the permission and against the directions of Honourable Court taking for granted that they are entitled for regularization of unauthorized construction portion of building by way of relaxation of building rules once again under G.O.Ms.No.483 M.A, dated 24.8.98, even if the considerations like building line, public safety are at stake and did the excavation for sub-cellar upto 9.0 mts from the ground level against the recommended depth of the Geo-technical consultant for 6 mts.*
>
> *The appropriate relaxations were already considered in lieu of the property handed over by applicants. There is no provision under G.O.Ms.No.483 M.A, dt.24.8.98 to relax the rules once again. Your request is rejected.*
>
> *You are required to remove/pull down the deviations to the sanctioned plan viz:*
>
> 1. *Unauthorisedly constructed sub-cellar,*
> 2. *Extended 4.60 mts, roof of cellar and stilt floor beyond the permitted building line towards eastern side.*
> 3. *Extended 1.40 mts, construction in the permitted 3.00 mts, and setback in northwest side.*
> 4. *Extended 1.25 mts cellar boundary beyond the permitted 3.0 mts, setback towards southwest.*
>
> *If you fail to remove/pull down the violations to sanctioned plan within 24 hours, the same will be removed/pulled down by the authority and the expenses thereof will be recovered from the applicants."*

4. This writ petition was filed on 28.5.2005 by way of House Motion. The petitioners moved WPMP.No.14996 of 2005 seeking direction to the respondents not to indulge in demolition or in any way interfere with the possession and progress of the construction in respect of the premises bearing Municipal No.6-3-902 A, Somajiguda, pending the writ petition. While issuing rule, interim direction upto 10-6-

2005 came to be granted, which was subsequently extended from time to time. Narration of facts of the case would be incomplete if no mention is made about the filing of suit being O.S.No.225 of 2004 on the file of Chief Judge, CCC, Hyderabad on 13.7.2004 by the petitioners and their futile attempts to secure some interim orders.

5. Since certain allegations came to be made against Ms.Jagnandan Mallik in the additional affidavit, the said Ms.Jagnandan Mallik filed WPMP.No.16983 of 2005 seeking her impleadment as party respondent. Subsequently the writ petitioners withdrew the allegations made against Jagnandan Mallik and thereupon her implead petition came to be dismissed on 8.11.2005.

6 . Respondents 1 and 2 filed counter affidavit and moved vacate petition being WVMP.No.1827 of 2005. The petitioners filed reply affidavit on 27.7.2005. Thereupon the respondents filed additional counter affidavit on 4.10.2005. The petitioners filed reply affidavit on 25.10.2005. The petitioners also moved WPMP.No.15029 of 2005 on 6.6.2005 pleading additional ground in the main writ petition that the 2nd respondent has passed the order impugned in the writ petition succumbing to political pressures without application of mind to the legal aspects. The petitioners also filed WPMP.No.25478 of 2005 on 9.9.2005 pleading ground in assailing the order impugned in the writ petition that the 2nd respondent has no jurisdiction to pass it. Both the WPMPs came to be allowed on 27.9.2005 permitting the petitioners to plead additional grounds. Yet another application in WPMP.No.30289 of 2005 has been moved by the petitioners on 2.11.2005 seeking an order of injunction restraining the respondents-authorities not to indulge in demolition of any part of the building in question without following due process of law.

7. The purpose of narrating sequence of events that occurred right from the date of the respondents-authorities bringing to the notice of the petitioners that their excavation for construction of cellar is unauthorized to the date of the order impugned in the writ petition is not to make the judgment bulky, but to understand and appreciate the stand of the parties in the writ petition.

8. Heard learned counsel appearing for the petitioners and learned Standing Counsel appearing for the respondents.

9. Learned counsel appearing for the petitioners submits that the petitioners have left an area of 179 square meters worth about Rs.70 lakhs without claiming any compensation even before granting the building permission and the petitioners have constructed a storm water drain running adjacent to the premises spending about Rs.20.00 lakhs. He further submits that a compounding fee of Rs.8,425/- has been paid by the petitioners for constructions made prior to building permission sanction and thus the constructions even if unauthorized have been regularized. A further assertion has been made that the petitioners are proceeding with the construction as per the sanctioned plan without variations and deviations. A feeble argument has been advanced that even if there are any deviations or violations, they do not warrant demolition of the constructions. He strenuously contends that 2nd respondent is not empowered to pass orders on the revised plan submitted by the petitioners and therefore the impugned order is liable to be set aside. What he means to say is that under G.O.Ms.No.423 M.A. dated 31-7-1998 it is 1st respondent who has to pass orders with regard to regularization of floor area ratio and other standards of building requirements. In support of his submissions, reliance has been placed on the following decisions:

1. CORPORATION OF CALCUTTA v. MULCHAND AGARWALA
2. K.PANDURANGARAO V. COMMR., MUNCIPAL CORPN.
3. 3 ACES V. MCH
4. MUNICIPAL CORPORATION OF HYDERABAD VS. SHAMSUDDIN HASSAN
5. ROHTAS INDUSTRIES LTD. V. S.D.AGARWAL
6. SWEETY BUILDERS PVT. LTD V. M.C.H.

7. J.ANURADHA V. THE GOVT. OF A.P.

In the first cited decision, it has been held that whether there has been a complaint from the public would not as such be material for deciding the question, though if there was one, it would be a piece of evidence in deciding whether the interests of the public have suffered by reason of the breaches. It has been further held that in order for demolition of the building under section 363 of Calcutta Municipal Act what has to be decided is whether the breaches are of a formal or trivial character in which case the imposition of a fine might meet the requirements of the case, or whether they are serious and likely to affect adversely the interests of the public in which case it would be proper to pass an order for demolition.

In the second cited decision, the writ petitioners therein filed an application before the Commissioner, MCH under sections 452 and 636 of the Act requesting the Commissioner to take action for removal of the unauthorized constructions made by the hut dwellers on his property. But his request was of no avail. He filed a writ petition praying for a writ of mandamus to be issued against Commissioner, contending that the above two sections confer a power on the Commissioner to remove the unauthorized constructions and the Commissioner failed to exercise that power. In those circumstances it has been held as follows:

> " The permissive words of sections 452 and 636 do not create a duty in the Commissioner to issue an order of demolition of unauthorized construction without any discretion in the matter. (2) The object for which the power is conferred on the Commissioner is not for the purpose of enforcing any right of a person or class of persons. Consequently there is no duty cast on the Commissioner to exercise it for the benefit of a person or class of persons who have no right, when required on their behalf. The petitioner has no legal right to ask for the enforcement of that power. In other words, the Commissioner owed no legal obligation to the petitioner to enforce that power for his benefit. (3) The Commissioner cannot, in the absence of adequate police assistance, enforce the power of demolishing the huts unauthorisedly raised."

In the 3rd cited decision, a Full Bench of this court formulated guidelines to be followed by the Municipal Corporation of Hyderabad in respect of illegal constructions. Para 36 of the judgment needs to be noted and it is thus:

" Having regard to the rampant, illegal and unauthorized constructions raised in the country as observed in STATE OF MAHARASHTRA's case (supra 11) before parting with this case, we would like to formulate the following guidelines to be followed by the respondent in respect of illegal constructions. The guidelines should not be treated as exhaustive but only illustrative and the discretion to be exercised by the Corporation in any given case should not be arbitrary or capricious.

1. In cases where applications have been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

2. Whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of "The Act".

3. If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorized structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorized constructions.

When the Corporation comes to the conclusion, keeping the above guidelines in view, that the construction in question is required to be demolished or pulled down, it should follow the procedure indicated below:

i. The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

ii. In any, case, there should not be any demolition after sun set and before sun rise.

iii. The Corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises. If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition.

These guidelines are laid down in view of the fact that the Corporation is a public authority and its action must be tested on the touchstone of fairness and reasonableness."

In the fourth cited decision, it has been held that a reading of Section 452 shows that if a building is constructed contrary to the provisions of the Act or the bye-laws, and if the person concerned fails to show sufficient cause as to why the said building should not be removed, altered or pulled down, the Commissioner "may" remove, alter or pull down the said building. It is not mandatory on the part of the Commissioner to remove or pull down the building. The word "may" does not mean "shall" in all cases though in some cases it may mean that.

In the fifth cited decision, the Supreme Court held that the authority must exercise discretionary power honestly and not for corrupt or ulterior purposes. The learned counsel laid much emphasis on paragraphs 45 and 46 of the judgment, which read as follows:

" **(45)** THE law recognises certain well recognised principles within which the discretionary power under S. 237 (b) must be exercised. There must be a real exercise of the discretion. The authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. In exercising the discretion the authority must have regard only to circumstances suggesting one or more of the matters specified in sub-clauses (i), (ii) and (iii). It must act reasonably and not capriciously or arbitrarily. It will be an absurd exercise of discretion, if, for example, the authority forms the requisite opinion on the ground that the director in charge of the company is a member of a particular community. Within these narrow limits the opinion is not conclusive and can be challenged in a court of law. Had S. 237 (b) made the opinion conclusive, it might be open to challenge as violative of Articles 14 and, 19 of the Constitution, see Corporation of Calcutta v. Calcutta Tramways Co. Ltd., 1964-5 SCR 25 = (AIR 1964 SC 1279) distinguishing 1962 Supp SCR 632 = (AIR 1962 SC 1371). S. 237 (b) is not violative of Articles 14 and 19.

(46) IF it is established that there were no materials upon which the authority could form the requisite opinion the court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power under S. 237 (b) is not fulfilled. On this ground I interfered with the order under S. 237 (b) in 1966 Supp SCR 311 at p. 343 = (AIR 1967 SC 295 at p. 313).

In the sixth cited decision it has been held that issue of notice to the petitioner

therein seeking demolition of structures on the ground that constructions were made in violation of Rules and Regulations without considering the representation made and revised plans submitted is not illegal.

In the seventh cited decision, the validity of the order passed by the Collector removing the Sarpanch came up for consideration. This Court while interpreting Sec.249 (1) of A.P.Gram Panchayat Act, 1994 has held that the District Collector has simply relied on the remarks called for from the officials of the Panchayat Raj Department without applying his mind to the charges leveled against the petitioner and his explanation.

10. Learned Standing Counsel appearing for the respondents-Corporation submits that the building permission sanction came to be issued on 23.9.2003 after taking into consideration the permissible relaxations provided under G.O.Ms.No.483. M.A., dated 24.8.1998 and the petitioners are not entitled to any further relaxations. He further submits that the order impugned in the writ petition came to be issued after the approval of the competent authority and the competent authority considered the entire material brought on record and rejected the application filed by the petitioners for regularization of deviations and thus the order impugned in the writ petition cannot be challenged on the ground that it is issued under the signature of 2nd respondent. A further submission has been made that the petitioners did not raise the competency of the 2nd respondent to hear the objections raised by the petitioners and indeed they submitted written submissions before the 2nd respondent who placed the entire material before the 1st respondent and after approval of the 1st respondent the order impugned in the writ petition came to be issued. Yet another submission has been made that W.P.No.19824 of 2004 questioning the validity of the notice issued u/s 636 of the Act ended in dismissal on 4.3.2005 and therefore nothing survives for adjudication except demolition of the unauthorized constructions. In support of his submissions reliance has been placed on the decision of Supreme Court in UNION OF INDIA Vs.KARAM SINGH and SITAPUR MUNICIPALITY V. PRAYAG NARAIN.

11. Let me first consider the validity of the order impugned in the writ petition. An argument has been advanced by learned counsel appearing for the petitioners that the order impugned in the writ petition is liable to be set aside on the ground of in competency of the signatory to the order. What he means to say is that 2nd respondent is not a competent authority to consider the relaxations as provided under G.O.Ms.No.423 M.A. dated 31-7-1998 and G.O.Ms.No.483 M.A., dated 24.8.1998. Para 3 of G.O.Ms.No.423 M.A. dated 31-7-1998 reads as under:

" 3. REVIEW OF REJECTION OF BUILDING APPLICATIONS:

1. After rejection of building applications on technical grounds and within seven days of such refusal the architect/licenced technical personnel and owner may represent the case to the local body on any working day between 3.00 p.m. to 5.00 p.m. After hearing, the concerned Authority shall communicate its decision on the representation within ten days of such hearing.

2. If the architect or owner or both are not satisfied with the decision on their representation then he may file a review petition along with 25 % of permit fee together with reasons and grounds for reviewing earlier decisions. The Review Petition shall be referred to a SELECT COMMITTEE whose decisions shall be final.

   The SELECT COMMITTEE shall consist of the following:

   a. Two Practising Architects

   b. One Retired Town Planner not below the rank of Joint Director at the time of Retirement.

   c. Chief City Planner/City Planner of concerned local authority or Chief Planning Officer/Planning Officer of concerned Urban Development Authority who shall be the conveners of the Committee for the cases of their jurisdiction.

3. The Select Committee shall meet within seven days from the date of review petition filed and communicate its decision within ten days of its meeting."

Under G.O.Ms.No.483 M.A., dated 24.8.1998 The Commissioner and Special Officer, MCH is authorized to grant permissions to construct/reconstruct the buildings for commercial use. It can be said without any controversy that it is the Commissioner and Special Officer, MCH who is the competent authority to consider the application for regularization. In pursuance of the directions given by this Court,

learned Standing Counsel appearing for the respondents-authorities placed on record the entire file. The records disclose that the 2nd respondent after receiving the objections and hearing the petitioners placed the file before the 1st respondent. The 1st respondent after going through the entire material on record refused to grant any relaxation and thereupon the order impugned in the writ petition came to be issued under the signature of 2nd respondent. It can be said without any controversy what is conveyed to the petitioners through the order impugned in the writ petition is the decision taken by the competent authority i.e. 1st respondent and therefore I do not see any substance in the contention of the learned counsel appearing for the petitioners that the impugned order in the writ petition issued by a person who is not competent to consider the case of the petitioners for relaxation as provided under the said Government Orders.

12. It is well-settled that while exercising the power of judicial review the court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can re-appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of facts by the decision maker.

13. A fact is required to be noted that the petitioners were informed at the earliest point of time that the excavation of sub-cellar was beyond the permissible limits.

Instead a notice u/s 452 of the Act came to be issued on the petitioners and thereupon the petitioners submitted a reply-dated 29.7.2004 to the 2nd respondent. The petitioners questioned the notice by way of filing W.P.No.1348 of 2004. In pursuance of the orders passed in the said writ petition the respondents' authorities were directed to provide opportunity to the petitioners before passing an order u/s 636 of the Act. The respondents' authorities after giving opportunity to the petitioners passed orders under section 636 of the Act. The petitioners questioned the order-dated 25.4.2004 passed under section 636 of the Act by filing W.P.No.19824 of 2004 and the said writ petition came to be dismissed on 4.3.2005. It goes without saying that this court refused to interfere with the order passed under section 636 of the Act. It appears the petitioners filed revised plans on 16.11.2004 seeking permission for construction of sub-cellar, cellar + 5 upper floors. The permission sought for was rejected on 29.12.2004.

14. Learned counsel appearing for the petitioners submits that the petitioners are proceeding with the construction in accordance with the approved plan and therefore the action of the respondents-authorities in initiating steps for demolition of the constructions is arbitrary and illegal. The submission of learned counsel is contrary to the pleadings of the petitioners. As per the pleadings of the petitioners, the constructions are not in accordance with the approved plan and therefore revised plans are submitted by them seeking approval of the construction made in deviation of the approved plan. This can be gathered from the written submissions made by them before the respondents-authorities. I deem it appropriate to refer the relevant portion of the written submissions (page 201 of the writ material paper book) made by the petitioners before the respondents-authorities and they are:

> " The orders of Municipal Corporation of Hyderabad dated 28/29-12-2004 have been passed after considering the Building Application dated 16.11.2004 filed by the owners seeking revision of original plan sanctioned by Municipal Corporation of Hyderabad by orders dated 24.9.2003 under permit No.45/13.
>
> The said permission dated 24.9.2003 was granted for the construction of "U" Type Commercial Complex with a Cellar, Stilt + 5 Upper Floors. The revised plan submitted with the application of the owners dated 16.11.2004 proposed construction of Sub-Cellar, Cellar, Ground + 5 Upper Floors. This proposal is for relaxation the constructions already made.

Hence, at this stage it has to be considered by the Municipal Corporation of Hyderabad whether the slight deviations pointed out in the notice dated 26.7.2004 can be relaxed. The alleged deviations are relating to (1) the construction of Sub-Cellar (2) projected roof on the front side and cellars are in violation of Rules in force."

15. On a plain reading of the written submissions made by the petitioners before the respondents-authorities, I am in no doubt to conclude that the constructions made by the petitioners are not in accordance with the approved plan. Much argument has been advanced that the respondents-authorities have not considered the G.O.Ms.No.423 M.A. dated 31-7-1998 and G.O.Ms.No.483 M.A., dated 24.8.1998 while issuing sanction proceedings in the year 2003 and therefore the respondents-authorities are required to give a fresh look to the revised plans taking into consideration the contents of G.O.Ms.No.483 M.A., dated 24.8.1998 and G.O.Ms.No.423 M.A. dated 31-7-1998. The stand of the respondents-authorities is that the above two government orders were taken into consideration while sanctioning the plan on 23.9.2003 itself. Such is the stand of the respondents-authorities, the contention of the petitioners that they are entitled for further relaxations and thereby their revised plan needs to be approved has no substance.

16. AT the cost of repetition I may state that the petitioners were informed at the earliest point of time i.e. on 26.7.2004 that the constructions were being made in violation of the approved plan. The petitioners gave a deaf ear to the notice served u/s 452 of the Act and proceeded with the construction. In this background can it be said that the respondents-authorities are not justified in taking steps for demolition of the constructions made by the petitioners in violation of the approved plan. In my considered view, the action of the respondents-authorities is within the provisions of law. If the constructions made in violation of the approved plan in the facts and circumstances of the case, are not demolished, it amounts to awarding premium to the violators of law.

17. A Full Bench decision in 3 ACES V. MCH on which the petitioners relied on is wholly inapplicable to the facts and circumstances of the case on hand. This is not a

case where the petitioners were not put on notice about the deviations at the earliest point of time. The petitioners being aware of the notice issued u/s 452 and order passed u/s 636 of the act proceeded to complete the constructions, which have been commenced in deviation of the original approved plan. This is a fit case where exemplary costs are required to be awarded.

18. In the result, this Writ Petition is dismissed with costs of Rs.20,000/- (Twenty Thousand rupees only).

Dated: 28-11-2005. (B.Seshasayana Reddy,J)

Tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11760 OF 2005

DISPOSED OF ON 28-11-2005.